IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	13 CR 476
CORNELIUS SISTRUNK,	)	Honorable Judge
et. al.,	)	Harry D. Leinenweber
	)	
Defendant.	)	

DEFENDANT CORNELIUS SISTRUNK'S MOTION FOR DISCOVERY ON THE ISSUE OF RACIAL PROFILING/SELECTIVE PROSECUTION IN ORDER TO PRESENT SUCH A DEFENSE

Now comes Defendant, CORNELIUS SISTRUNK, through his attorney, JOSHUA B. ADAMS, joined by co-Defendants DEERIC STEVENS, MISHON WASHINGTON, ANGEL OLSON, MIGUEL LEDESMA, SALVADOR ELIAS, and ADRIAN ELIAS, pursuant to Fed. R. Crim. P. 16, and Local Rule 16.1, and respectfully requests that this honorable court enter an order to provide certain discovery described below. Mr. Sistrunk, and his co-defendants require this discovery in order to pursue a defense that the Bureau of Alcohol, Firearms, and Tobacco target people of color in specific crimes it creates, i.e., phony stash house cases like the case before this honorable court. In support of his motion, Mr. Sistrunk states the following.

I. Background

On June 4, 2013, ATF agents arrested Mr. Sistrunk and his co-defendants as part of an undercover sting to rob a fictitious stash house. Then, on June 18, 2013, the government returned an indictment against Mr. Sistrunk charging him, *inter alia*, with conspiracy to rob a drug stash house, and knowingly possessed three firearms. Other defendants were also charged with possession with the intent to distribute 5 kilograms or more of cocaine.

On August 21, 2013, in compliance with Rule 16.1 and Local Rule 12, counsel sent a letter to the US Attorney's office seeking disclosure of all cases between 2006 and the present of all phony stash house cases, included the name and race of each defendant, as well as any instructions given by supervisors in the U.S. Attorney's office regarding racial profiling and selective prosecution. Prior to the status call on August 22, 2013, the government informed counsel that it would not comply with this discovery request.

This case is another in a long line of a staple of government prosecutions across the country. The Seventh Circuit has called these types of cases as "tawdry" affairs." *United States v. Lewis*, 641 F.3d 773, 777 (7th Cir. 2011). ATF agents approach an informant, and along with an undercover agent, the government creates a crime out of whole cloth. The alleged scheme goes as follows: the undercover agent and confidential informant recruit would be co-conspirators, and tell them there is a stash house whose location is known only to the informant and undercover agent. Large amounts of drugs (exactly enough to trigger mandatory minimums) and cash are at this house, which, fortunately for them, is only guarded by a few men. These two government agents know of this house because they are drug couriers who have visited the location. Under this story, the agent and CI recruit other would-be robbers, using video and audio recorded meetings, and convince these individuals to rob this phony stash house. Unbeknownst to the other co-defendants, like Mr. Sistrunk, there is no stash house, there are no guns, and there are no drugs. Eventually, on the day of the supposed robbery of the stash house, ATF agents arrest these individuals, and charge them with drug conspiracies, pursuant to 21 USC §841, and gun charges, pursuant to 18 USC §922(g) and 924(c). This is exactly what happened to the individuals charged in this case.

In a vast number of these phony stash house cases, as in this case, a majority of the accused are either African American or Hispanic. The defendants in this case seek discovery to support a defense that the ATF and U.S. Attorney's office engaged in racial profiling and selective prosecution when it originally targeted a majority of non-Caucasian minority defendants. (Mr. Sistrunk notes that one co-defendant, Paul Ledesma, is Caucasian). Since 2011, an overwhelming number of African American and Latinos have been prosecuted in these cases. Judge Castillo has granted a similar motion in another phony stash house case, in *United States v. Hummons*, 12 Cr 887 (Dock. #70). *See* Ex. A.

For the reasons listed below, and under the stringent standards in *United States v. Armstrong*, 517 U.S. 456 (1996), and *United States v. Barlow*, 310 F.3d 1007 (7th Cir. 2002), Mr. Sistrunk is entitled to the discovery requested in this case.

II. Argument

1. Standard to obtain discovery to support a Racial Profiling/ Selective Prosecution Defense.

Generally, federal prosecutors have wide ranging discretion to perform a "special province" of the Executive Branch, to "enforce the Nation's criminal laws," and therefore is a presumption that they are not violating the Constitution. *Armstrong*, 517 U.S. at 465. In order for Mr. Sistrunk to overcome this presumption afforded to the government, and to prevail on a selective prosecution defense, "a criminal defendant must present 'clear evidence to the contrary by drawing on ordinary equal protection standards.'" *Id*. In order to establish a discriminatory effect in a race case, "the claimant must show that similarly situated individuals of a different race were not prosecuted." *Id.*

The *Armstrong* court required that "defendants produce some evidence of differential treatment of similarly situated members of other races or protected classes." *Armstrong*, 517 U.S. at 470. A generalized statistical study is insufficient to overcome this hurdle. In *United States v. Barlow*, the Seventh Circuit affirmed the district court's denial of a similar discovery request, by holding

> Statistical data has proven a useful tool in some high-profile state racial profiling cases. Although statistics alone rarely establish an equal protection violation, they are sufficient to establish the discriminatory effect prong of the *Armstrong* test. *(citing U.S. v. Chavez*, 251 F.3d at 640). But such statistics must be relevant and reliable.

Barlow, 310 F.3d at 1011.

2. **Mr. Sistrunk satisfies the *Armstrong* standard**

a. Since 2006, African Americans have been specifically targeted in phony stash house rip-off cases.

Mr. Sistrunk has concrete, irrefutable evidence to support the racial disparity regarding the creation and prosecution of phony stash house cases in the Northern District of Illinois since 2006. Here, the criminal complaint paints a picture similar to the plethora of stash house cases in this district. Specifically, on May 15, 2013, the CI tells the ATF that he met an individual he knew as "Kasper" later identified as Salvador Elias ("Elias). (Compl., ¶ 7). The CI told agents that Elias said he belonged to a gang and that he and his gang robbed drug dealers and stash houses. *Id*. In many cases, including this one, the informant is paid for his information.

Then, on May 20, 2013, the CI placed a consensually recorded call to Elias, in which Elias thanked the CI for "telling Elias about the potential robbery . . ." *Id.*, ¶ 10. On May 21, 2013 Elias and his brother Adrian, met with the CI and undercover agent. At that meeting, the CI asked Elias how many guys he had in his crew, and the CI said he could get firearms to use in the factious robbery. *Id.*, ¶18. Eventually, the date of the robbery arrives, and the ATF arrests Elias and all of the other individuals he recruited for this supposed crime.

Defense counsel in *Hummons* has identified 16 ATF phony stash house rip-off cases that the U.S. Attorney's office has indicted. *See Hummons,* Def. Mot. for Disc., Dckt. # 51, at 5; attached as Ex. A. From 2006 through the present, the statistics show that an overwhelming number of African Americans have been targeted for these phony crimes. Since 2011, 19 African American defendants and 7 Latino defendants have been charged with these types of cases. Of these 26 defendants, 80% of them are African American. (Id.). In discrimination cases, such as employment, or racial, the "inexorable zero has always been significant proof of discriminatory effect and intent." *Id*.; *Yick Wo v. Hopkins*, 118 U.S. at 373; *International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 343, n.23 (1977).

b. Mr. Sistrunk requires this discovery to identify similarly situated white individuals

In order to satisfy *Armstrong's* second prong, Mr. Sistrunk must show that similarly situated whites were treated differently; i.e., not charged in these phony stash house cases. However, it is virtually impossible for Mr. Sistrunk to know if similarly situated whites are targeted by the United States government absent any information about what the selection criteria the informants and ATF use. This is *exactly* why the defense has tried to obtain this information, yet the government refuses to provide this information. This information is particularly significant because in these cases, the informants and ATF agents have complete and total control about whom to approach and recruit for these alleged rip-offs. Right now, the pool of similarly situated white is "the entire adult white population of the Northern District of Illinois." *Hummons*, 12-CR-887, Dkt. # 51, at 6.

The second element Mr. Sistrunk must show is discriminatory intent. Since 2010, zero white defendants have been prosecuted in these cases. That is one way to show such intent. Another hallmark of discriminatory intent has been to show that the entity engaging in discrimination is an ostrich who buries its head in the sand to avoid the obvious. *See McGill v. Duckworth*, 944 F.2d 344, 351 (7th Cir. 1991) ("Suspecting that something is true but shutting your eyes for fear of what you will learn satisfies the scienter requirements. Going out of your way to avoid acquiring unwelcome knowledge is a species of intent.").

In *Hummons*, the government stated that the ATF keeps no statistics about the race of its phony stash house rip-off defendants. *Hummons*, Dkt. #51, at 7. While the U.S. Attorney's office has a presumption that it actions are constitutional, investigative agencies, such as the ATF, do not enjoy the same presumption. In this case, the U.S. Attorney's office decided not to turn over this discovery to counsel. It is the government that is the "ostrich," sticking its collective head in the sand while an overwhelming number of African Americans and Latinos are charged in these phony stash house cases. Judge Castillo made a finding that "unlike the typical historical, alleged violation of federal law, these unique cases are generated by the targeted use of confidential information to create potential robberies of phony drug stash houses." *Hummons*, Dkt.# 70, at 1, Ex. A.

Lastly, Mr. Sistrunk is entitled to this discovery under *Brady v. Maryland*, 373 U.S. 83 (1963). If the ATF considered race when it decides to prosecute or recommend prosecution, then the defense is entitled to know that in compliance with the government's *Brady* obligation.

WHEREFORE, Mr. Sistrunk respectfully requests that this honorable court enter an order, directing the government to provide:

1. A list by case name, number and race of each defendant of all phony stash house rip off cases brought by the U.S. Attorney's Office in this district from 2006 to present.
2. All documents containing instructions given from 2006 to the present by any supervisors employed by the U.S. Attorney office for the Northern District of Illinois about the responsibilities of the AUSA's to ensure that defendants in cases brought by the Office of the United States Attorney for the Northern District of Illinois have not been targeted due to their race, color, ancestry or national origin and specifically that those persons who are defendants in phony stash house cases in which ATF was the investigatory agency have not been targeted due to their race, color, ancestry or national origin and that such prosecutions haven not been brought with any discriminatory intent on the basis of the defendants' race, color, ancestry or national origin.
3. Any documents prepared by the ATF which summarizes how to investigate and prosecute phony stash house rip off cases, including any guidelines for selecting appropriate targets for these cases including but not limited to the Home Invasion Operations Bulletin referenced in USA Today.

Respectfully submitted,

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